

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| RHONDA McCAIN | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| INDEPENDENCE CHRYSLER-PLYMOUTH | : | |
| INC. d/b/a METRO-CHRYSLER | : | |
| PLYMOUTH JEEP EAGLE | : | NO. 02-863 |

MEMORANDUM ORDER

Plaintiff alleges that she was subjected to a sexually hostile work environment at the hands of one of defendant's supervisors, including unwelcome sexual advances, and was constructively discharged at the time she resigned rather than further tolerate the offensive conduct. She has asserted claims under Title VII and the Pennsylvania Human Relations Act ("PHRA").¹ Plaintiff has also pled a separate claim for punitive damages captioned "Punitive Damages Under the Pennsylvania Human Relations Act."²

Presently before the court is defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure timely

¹ The count containing the PHRA claim includes a statement that plaintiff was subject to discrimination "because of his race and sex." As plaintiff is otherwise identified throughout the complaint as a female and as every substantive factual allegation relates to sexual harassment, the court assumes that the reference by plaintiff to "his race" was in error.

² Although expressly captioned as a claim under the PHRA, it is alleged in the body of this count that defendant acted "in reckless disregard" and "with indifference to plaintiff's federally protected rights."

to exhaust administrative remedies. Defendant also asserts the unavailability of punitive damages under the PHRA.³

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim while accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987); Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 1994), aff'd, 72 F.3d 318 (3d Cir. 1995). In addressing such a motion, a court may also consider matters of public record, including documents memorializing decisions of governmental agencies, and documents referenced in the complaint or essential to a plaintiff's claim which are attached to a defendant's motion. See Churchill v. Star Enter., 183 F.3d 184, 190 n.5 (3d Cir. 1999); Beverly Enter., Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999), cert. denied, 120 S. Ct. 795 (2000); In re Burlington Coat Factory Sec. Lit., 114 F.3d 1410, 1426 (3d Cir. 1997); Arizmendi v. Lawson, 914 F. Supp. 1157, 1160-61 (E.D. Pa. 1996).

³ Defendant is correct. See Hoy v. Angelone, 720 A.2d 745, 751 (Pa. 1998). It appears from plaintiff's reference to "federally protected rights," however, that she may have been attempting to assert a claim for punitive damages under Title VII although she does not so state in her response to defendant's motion. Punitive damages are available under Title VII. See Kolstad v. ADA, 527 U.S. 526, 529 (1999). Punitive damages, however, are a form of relief and not the basis for a separate claim. See Mansmann v. Tuman, 970 F. Supp. 389, 403-04 (E.D. Pa. 1997). In any event, the right to recover any damages is subject to timely compliance with the administrative filing requirements.

A claim may be dismissed as time-barred when it is apparent from the complaint and other matters properly considered that an applicable statute of limitations has lapsed. Id. at 1160. This includes the statutory deadline for filing an administrative complaint which is a prerequisite for maintaining suit under Title VII or the PHRA. See Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997); Robinson v. Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997) (the "[t]imeliness of [Title VII] exhaustion requirements are best resolved under Rule 12(b)(6) covering motions to dismiss for failure to state a claim").

Plaintiff alleges that "throughout her employment" as an automobile salesperson with defendant from March 1, 1999 through December 15, 1999 when she resigned, she was subjected to a sexually hostile work environment and describes various instances of offensive comments or behavior. She specifically references the EEOC process. She alleges that she received a right to sue letter and "all conditions precedent to the institution of this suit have been fulfilled." The timely filing of an administrative complaint is such a condition precedent.

Plaintiff's reference to the administrative process warrants consideration of the EEOC complaint and right to sue letter submitted with the instant motion. These documents also are matters of public record. The authenticity of the documents is unquestioned, plaintiff clearly is not surprised by them and

she has been afforded an opportunity to address defendant's claim of untimeliness. In these circumstances, it is impractical and unnecessary to require defendant to assert untimeliness in an answer accompanied by a Rule 12(c) or Rule 56 motion. See Bostic v. AT&T of Virgin Islands, 166 F. Supp. 2d 350, 355 (D.V.I. 2001) (court may properly consider EEOC complaint submitted by defendant in deciding Rule 12(b)(6) motion to dismiss for untimeliness); Rogan v. Giant Eagle, Inc., 113 F. Supp. 2d 777, 782 (W.D. Pa. 2000) (court may properly consider as matters of public record plaintiff's EEOC complaint and right to sue letter submitted with defendant's Rule 12(b)(6) motion), aff'd, 276 F.3d 579 (3d Cir. 2001); Dixon v. Philadelphia Housing Authority, 43 F. Supp. 2d 543, 544-45 (E.D. Pa. 1999) (reference by plaintiff in court complaint to EEOC process warrants consideration of EEOC complaint submitted by defendant in connection with Rule 12(b)(6) motion). See also Maldonado-Cordero v. AT&T, 73 F. Supp. 2d 177, 185 (D.P.R. 1999) (court may properly consider EEOC complaint supplied by defendant with Rule 12(b)(6) motion as matter necessarily referenced in court complaint or as public record); Greene v. Term City, Inc., 828 F. Supp. 584, 586 n.1 (N.D. Ill. 1993) (EEOC complaint attached to defendant's Rule 12(b)(6) motion deemed part of pleadings where plaintiff alleged she had satisfied all requirements for presenting Title VII claim).

The EEOC declined to act on plaintiff's complaint because "it was not filed within the time limit required by law." Plaintiff ceased employment with defendant on December 15, 1999 and alleges no actionable conduct thereafter. Plaintiff filed her EEOC complaint 680 days later on October 25, 2001.

The time limitations for filing an EEOC complaint are subject to equitable tolling, however, these requirements have been established by Congress and may not be disregarded by courts for reasons of sympathy. See Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 152 (1984). "[I]n the absence of a recognized equitable consideration, the court cannot extend the limitations period by even one day." Mosel v. Hills Dep't Store, Inc., 789 F.2d 251, 253 (3d Cir. 1986) (citations omitted). Equitable tolling is "a remedy available only sparingly and in extraordinary situations." Robinson, 107 F.3d at 1023. Equitable tolling is appropriate where the defendant has actively misled the plaintiff regarding her cause of action, where the plaintiff has in some extraordinary way been prevented from asserting her rights or where she has mistakenly asserted her rights in the wrong forum. See Lake v. Arnold, 232 F.3d 360, 370 n.9 (3d Cir. 2000).

A plaintiff seeking to toll a statute of limitations must also show that she exercised reasonable diligence in pursuing her claim. See New Castle County v. Halliburton NUS

Corp., 111 F.3d 1116, 1126 (3d Cir. 1997); Scary v. Philadelphia Gas Works, 202 F.R.D. 148, 153 (E.D. Pa. 2001). The burden is on a plaintiff to show that the limitations period should be tolled. See Boos v. Runyon, 201 F.3d 178, 185 (2d Cir. 2000); Byers v. Follmer Trucking Co., 763 F.2d 599, 600-01 (3d Cir. 1985); Arizmendi, 914 F. Supp. at 1160. A plaintiff must plead facts, which if true, would show the applicability of equitable tolling or other basis to excuse compliance. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391 (3d Cir. 1994).

All of the facts upon which plaintiff's claims are predicated were clearly known to her on the day of her resignation. She has not alleged that defendant actively misled her respecting a cause of action, that she was prevented in some extraordinary way from asserting her rights or that she mistakenly asserted her rights in the wrong forum. Plaintiff has neither pled nor proffered any facts from which one could possibly find that the limitations period should be tolled, let alone by 380 days.

ACCORDINGLY, this day of August, 2002, upon consideration of defendant's Motion to Dismiss (Doc. #3) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above action is **DISMISSED**.

BY THE COURT:

JAY C. WALDMAN, J.